

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.17865 of 1999

Between:

N.N.Parker, S/o. B.C.Parker.
R/o. 9-1-33/19, Prashant Nagar,
Langar House, Hyderabad.

..... PETITIONER

AND

- 1 Methodist Boys High School, Rep. Principal & Correspondent.
Abid Road, Hyderabad.
- 2 District Education Officer,
Hyderabad.
- 3 Director of School Education,
Govt., of A.P. Nampally,
Hyderabad.
- 4 State of A.P., Rep. Secretary.
Education Department (S.E) Secretariat,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction especially one in the nature of Mandamus: i) declare the action of the respondents in not allowing the petitioners to commute his pension and not paying the due pensions to which the petitioners is eligible as illegal, arbitrary and offends Articles 14, 16 and 21 of the Constitution of India, ii) direct the respondents to allow the petitioner to commute the pensions and to pay the legitimate pensions due to the petitioners, iii) direct the respondents to pay the encashment of E.L. due to the petitioners, iv) direct the respondents to pay interest @ 18% per annum on the amounts due to the petitioner, v) to grant such other orders.

Counsel for the Petitioner: Mr. A.RAVINDER REDDY

Counsel for Respondent No.1: Mr. P. INNAYYA REDDY

Counsel for Respondents 2 to 4: GP FOR SCHOOL EDUCATION

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.17865 of 1999

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ORAL ORDER:

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This Writ Petition is filed seeking a Mandamus to declare the action of the respondents in not allowing the petitioner to commute his pension and not paying the due pension to which he is eligible as arbitrary and illegal and consequently to direct the respondents to allow the petitioner to commute the pension and to pay the legitimate pension due to him and to permit to encash the earned leave and also to pay interest at 18% per annum on the amounts due to him.

It is the case of the petitioner that he joined the services of the 1st respondent-School as School Assistant on 12-6-1967 and after attaining the age of superannuation, retired from service on 1-6-1991. He was granted with a pension of Rs.1,872/- per month. Earlier, he filed Writ Petition No.17411 of 1991 when he was not permitted to commute the pension. The said Writ Petition was disposed of on 29-1-1996 directing the authorities concerned to consider his request for commutation of pension. The present Writ Petition is filed seeking pension as per the Andhra Pradesh Liberalized Pension Rules,1980.

It is the case of the petitioner that the Andhra Pradesh Liberalized Pension Rules have been extended even for the Teachers, who have retired from service of the Schools, which opted out from the grant-in-aid during 1963-64. Under the Andhra Pradesh Liberalized Pension Rules, he is entitled for pension of Rs.3,158/-, where he is being paid Rs.1,872/- only. Hence, this Writ Petition.

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioner. It is *inter alia* asserted that the petitioner is not

entitled to commutation of pension. The respondent-institution was under grant-in-aid scheme till 1963 only, whereas the petitioner was appointed in the year 1967 after the School ceased to be under the grant-in-aid scheme. Petitioner retired from service on 31-5-1991 and ever since he has been paid pension as per the Scheme evolved by the Management. No retired staff has the facility to claim commutation of pension. The School in which the petitioner was working was outside the grant-in-aid scheme; therefore, he is not entitled for the pension as applicable to Government Teachers or aided Teachers working in aided institutions. The Education Code, which governs all the educational institutions under the jurisdiction of Hyderabad Regional Conference of the Methodist Church in India does not provide for commutation. The petitioner was paid gratuity as per the entitlement under the Rules and also the pension.

The learned counsel for the petitioner strenuously contended that whether a person is appointed after the School was taken out of the grant-in-aid scheme or before, the Teachers working under the respondent-Management are entitled for the benefit under the Andhra Pradesh Liberalized Pension Rules. Learned counsel brought to the notice of this Court various Circulars and Governmental Orders and contended that the petitioner is entitled for pension on par with Government Teachers/aided Teachers. He also stated that in view of the clarification issued by the Government vide letter dated 21-10-1980 of the Deputy Secretary to Government, Education Department, Government of Andhra Pradesh, the petitioner is entitled for pension on par with the Government Teachers, since he retired from service in the year 1991.

Learned counsel for the 1st respondent-School and also the learned Government Pleader contended that all the schemes of Liberalized Pension, which have been extended from 1961, 1973 and 1980, are applicable only to the Teachers, who have been appointed against the posts, which were admitted to grant-in-aid or those who have been enjoying grant-in-aid and opted to be out of grant-in-aid before 1963-64 and not to the case of the petitioner, since the petitioner was neither appointed during the grant-in-aid period nor he was in service as on the date of opting out from the grant-in-aid by the respondent-School. Therefore, the various circulars and Memorandums/Orders issued by the Government have no relevance to the case of the petitioner.

I have given my earnest consideration to the respective submissions made by the

learned counsel on either side and gone through the material made available on record.

Before going into the merits of the case, it is apt to go through relevant Circulars/Governmental Orders. In Memorandum No.4887-F1/63-64, dated 30-3-1964, it was stated as under:

‘In G.O.Ms.No.2512, Education, dated 24-9-1963, Govt. have extended the grant-in-aid rules applicable to the aided secondary schools under the aided managements in the Andhra area to the Telangana region also. Certain managements of the aided secondary schools in the Telangana region have represented to the Government that their schools may be recognized without grant-in-aid from the Government.

Government have examined their request carefully and are pleased to permit the Director of Public Instruction to accord recognition to such of those schools which do not wish to opt for the revised grant-in-aid rules, but would like to function without receiving any grant from the Government, provided these institutions are prepared to fulfil the following conditions:

i to x.....

xi. The Pension and Provident Fund scheme introduced by the Govt. in respect of non-Government Institutions must be implemented in all such institutions. The Government contribution may be made available at Government rates.

Should any Institution fail to implement the conditions stipulated above, the Government contribution may be withdrawn in which case, the Management will have to bear the entire cost of the scheme and should deposit the pension and Provident Fund contribution as the case may be, as fixed by the Government in the Treasury every month.

No funds of the School should be diverted for a purpose other than for the improvement of the School itself. If it is found that any portion of the fund is diverted for other purposes, the Management will be required to make good that amount within a period of three months and credit it to the corpus fund of the school; persistent irregularity of this kind will render the management liable for supersession and Govt. shall have the right to take over such institution.

Xii & xiii.....”

Memo.No.2408-T1/75-19, dated 3-12-1979, which is also relevant, reads as under:

“In G.O.Ms.No.2512, Education, dated 24/9/1963, Government extended the grant-in-aid rules applicable to the aided Secondary Schools under Aided Managements in Andhra Area to Telangana Region also. Certain Managements reorganized without grant-in-aid from the Government. Government examined the

requests and permitted the Director of Public Instruction in the Memo first cited and to accord recognition to such of these schools which is English to opt for the revised grant-in-aid rules, provided these institutions promoted to provident fund scheme authorized to maintain therein. One of the conditions maintained in the said Memo was that the pension and provident fund scheme introduced by the Government in respect of Non-Government institutions must be implemented in all such institutions and that the Government contribution must be available at Government rates. Should any institution fails to implement the condition, the Government contribution would be withdrawn and the management would have to bear the entire cost of the scheme and should deposit the pension and provident fund contribution as might be fixed by Government in the treasury every month.

2. With reference to the aforesaid Memo, eighteen schools, which opted out of the grant-in-aid were given recognition. Subsequently, on a reference made by the District Educational Officer, Hyderabad City, the Accountant General, Andhra Pradesh informed that as per G.O.Ms.No.3372, Education, dated 31-10-1961, the teachers of unaided schools are not eligible to the pensionary benefits and be sought clarification whether the teacher who retired from the schools referred to above, are entitled to the pensionary benefits. Since they did not mention from the school run from aided managements, some of the teachers, who retired from schools complained that their contribution and receipt of the pension and retirement benefits.

3. The matter has been examined carefully by Government in consultation with the Director of School Education and the following clarification is issued:

As per G.O.Ms.No.5372, Education Department, dated.31-10-1961, the teachers who retired from Aided Schools are only entitled for the pension and retirement benefits, but the schools referred to in Para 2 above are an exception inasmuch as they were under aid prior to 1963-64, and managements of the schools opted to go out of grant in aid subject to the conditions, one of the conditions being implementation of Pension and Provident Fund Scheme for their staff. Therefore, the retired teachers of these schools are entitled for pension and retirement benefits and the concerned managements have to implement the pension and provident fund scheme as laid down in Para 2(Xr) of the Memo 1st cited, otherwise it would amount to violation of the conditions of recognition and liable for derecognition.

4. The Director of School Education is, therefore, requested to ensure that the managements of the schools in question contribute their share of pension and to provident fund to enable the teachers of these schools to draw pension/gratuity and provident fund. If the Management do not fulfil the condition, he may take action to withdraw recognition of these institutions after giving them a notice.”

The relevant portion of Letter No.1171/T1-80-3 Edn., dated 21-10-1980 addressed by the Deputy Secretary to Government, Education Department, Government of

Andhra Pradesh, Hyderabad to the Accountant General, Andhra Pradesh, Hyderabad reads as under:

S.No.	Clarification sought	Reply
1		
2	Whether the person who retired after the issue of G.O.Ms.No.1132/Edn., dated.16-11-72 in which the benefits of Liberalised Pension Rules,1963 and Family Pension Rules,1964 were introduced are eligible for the benefits therein.	As per G.O.Ms.No.1132, Edn., dated.16-11-73, all the teachers under Local bodies and Aided Managements, who retired prior to 1-4-73 will continue to be governed by Andhra Pradesh Teachers C.P.F. cum-pension/Gratuity Rules,1961 and those, who retired on or after 1-4-73 will be governed by the Liberalized Pension Rules,1961 and Family Pension Rules,1964. Therefore, the persons who retired on or after 1-4-73 are eligible for the benefits of Liberalized Pension Rules,1961 and Family Pension Rules,1964.
3.		

It is also relevant to extract Memorandum No.2153/SS.2/91-4, dated 22-6-1992:

“The attention of the Director of School Education, A.P., Hyderabad is invited to the reference 1st and 4th cited and he is informed that the Govt. have issued clarification regarding eligibility of teachers, who retired from schools which opted out of grant-in-aid during 1963-64 vide G.O.Memo No.2408/T1/75-19 Edn., dated.3-12-1979 the Director of School Education has sought for further clarification on the same subject whether the teachers appointed during the period from 1-4-63 to 1-4-80 i.e. during the time when the schools were out of grant in aid are eligible for pension on par with the teachers appointed prior to 1-4-1963.

As per G.O.Ms.No.3372, Edn., dated.31-10-1961 the teachers who retired from aided schools are only entitled for pension and retirement benefits. But the 18 specified schools are an exception inasmuch as they were under aid prior to 1963-64 and the management of the schools opted to go out of grant in aid subject to the conditions, one of the conditions being implementation of pension and provident fund for their staff. Therefore, the retied teachers of these 18 schools are entitled for pension and retirement benefits, and the management concerned has to implement the pension and provident fund scheme as laid down in para 2(XI) of Govt Memo No.4887/F1/63-64 Edn., dated.30-3-1964.

Govt. after careful examination hereby clarify that the teachers, who were appointed prior to 1-4-1963 in an aided post and retires subsequently are eligible for pensionery benefits. But the teachers appointed between 1-4-63 and 1-4-80 i.e. during the time when the schools were out of grant in aid are not eligible for pensionery benefits. Further, the teachers appointed after 1-4-80 in an aided post

are also eligible for pensionary benefits only for aided service, subject to the condition that the management have to contribute their share of 9.5% as per the clarification issued vide Govt. Letter No.1171/T1/80-3, Edn., dated.21-10-1980. The unaided service in an unaided post are not eligible for pensionary benefits though the managements contribute their share.

As regard applicability of voluntary retirement of these 18 specific schools, Govt. have already issued orders in G.O.Ms.No.251 Edn. Dated.9-3-1982. The teachers, who were appointed prior to 1-4-1963 in an aided post are also entitled for voluntary retirement as it is not disqualification for the pension because the pension rules are extended to all aided institutions, the rule of voluntary retirement automatically applies to those teachers of these 18 schools, who were appointed in aided posts prior to 1-4-1963.

The Director of School Education, A.P., Hyderabad is requested to take action accordingly and settle all pending pension cases of the teachers of these 18 schools keeping in view the clarifications issued on the above subjects.”

Admittedly, the Memorandum dated 30-3-1964, as noted above, would only deal with the situation of opting schools for being out of grant-in-aid and if the Teachers are working therein, their interest was protected saying that even those teachers, who were working in the year 1963-64 and the schools wherein they are working, are opted out of grant-in-aid, they are entitled for pension as applicable to the Government/aided Teachers. Further, when a clarification was sought, the same was reiterated in the Memorandum dated 3-12-1979 and the letter dated 21-10-1980 as noted above. None of these Circulars or the letters deals with the situation as that of the petitioner herein. Admittedly, the petitioner herein joined the service in 1967 i.e. much after the respondent-School opted for being out of grant-in-aid scheme. The Management itself adopted some pension scheme and the petitioner is getting the pension under the said scheme. Therefore, the contention of the learned counsel for the petitioner that the petitioner is entitled to the pension as per Clause (2) of the letter dated 21-10-1980 is misconstrued. The petitioner is not entitled for extension of liberalized pension under any of the scheme. After all, the pension is being paid by the institution itself and there is no Government contribution in the said pension. The pension scheme, which is evolved and being extended by the respondent-management and which is a pious obligation, cannot be allowed to be exploited by the petitioner saying that the pension paid to him is not in accordance with the Rules and he is entitled for the benefits under the A.P. Liberalized Pension Rules and as

such, he is required to be paid a monthly pension of Rs.3,158/-. A bare reading of the Memo No.2153/SS.2/91-4, dated 22-6-1992 would clear position as to the petitioner.

The learned counsel for the petitioner brought to the notice of this Court, a Judgment in Writ Petition No.3798 of 2001, dated 3-2-2003 and contended that in view of the said decision, the petitioner is entitled for the extension of benefit under the above Rules. In the said Judgment, the question as to whether the petitioners therein were appointed after the schools were taken out of grant-in-aid or before has not come up for consideration. Therefore, the said Judgment has no relevance to the facts of the case. The Writ Petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

28-7-2005

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